are uniform in not allowing a plaintiff to recover who has acted unreasonably to save property exposed to danger by the negligence of the defendant. *Pegram* v. *Seaboard Air Line Ry. Co.*, 139 N. C. 303.

NEGLIGENCE — DUTY OF CARE — DUTY TO RESCUER OF PERSON ENDANGERED BY DEFENDANT'S NEGLIGENCE. — Through the negligence of the defendant, A's horses were frightened by the defendant's engine and became unmanageable alongside of the defendant's tracks, so that A was placed in a dangerous position. The plaintiff tried to rescue A, and received injuries for which he sued the defendant. *Held*, that the plaintiff can recover. *Dixon* v. *New York, New Haven, & Hartford R. Co.*, 92 N. E. 1030 (Mass.).

Endangering oneself to save life, it is well settled, is not necessarily contributory negligence such as to bar recovery by the rescuer. *Eckert* v. *Long Island Railroad*, 43 N. Y. 502. But most of the cases consider the question of contributory negligence merely, without explaining how any duty to the rescuer arises upon which to ground his action. To maintain an action for negligence there must be a duty owing from this particular defendant to this particular plaintiff. See *Sweeny* v. *Old Colony & Newport R. Co.*, 10 Allen (Mass.) 368, 372. Once the plaintiff has come upon the track, the defendant must use reasonable care to avoid an accident. But then it is generally too late to save the plaintiff by any amount of care, so there is no failure to discharge this duty. But the foreseeable consequence of endangering A is that the plaintiff will try to save him. The negligence towards A is the proximate cause of the plaintiff's injuries. *Maryland Steel Co.* v. *Marney*, 88 Md. 482. The defendant, therefore, owes the plaintiff a duty not so to imperil A as to induce the plaintiff to act to his injury. This is the result reached by the principal case, and other courts have come more blindly to the same conclusion. *Pennsylvania Co.* v. *Langendorf*, 48 Oh. St. 316. See *Donahoe* v. *Wabash, St. Louis, & Pacific Ry. Co.*, 83 Mo. 560, 564.

NUISANCE — WHAT CONSTITUTES NUISANCE — TUBERCULOSIS SANITARIUM. — The plaintiff sued for an injunction on the ground that the defendant's tuberculosis sanitarium was a nuisance under a statute declaring any act which annoys, injures, or endangers the comfort, repose, health, or safety of others to be a nuisance. The lower court denied relief on the grounds that there was no real danger, and that in the light of scientific investigations the existing public fear of tuberculosis was unfounded and imaginary. *Held*, that an injunction should issue. *Everett* v. *Paschall*, 111 Pac. 879 (Wash.).

In basing its decree on the disturbance of the plaintiff's comfortable enjoyment by fear, the court has run counter to Blackstone and early common-law decisions. *Baines* v. *Baker*, 1 Ambl. 158; *Anonymous*, 3 Atk. 750. The English courts still demand a real and appreciable danger before granting an injunction in hospital cases. *Fleet* v. *Metropolitan Asylums Board*, 2 T. L. Rep. 361. In this country such institutions are not nuisances *per se*. *Barnard* v. *Sherley*, 135 Ind. 547. In general, a nuisance requires physical, and not merely mental, discomfort. *Cleveland* v. *Citizens Gas Light Co.*, 20 N. J. Eq. 201. It must also appear that the acts complained of would affect all reasonable persons similarly situated. *Rogers* v. *Elliott*, 146 Mass. 349. In the closely analogous case of explosives only the actual danger of injury is considered. *Heeg* v. *Licht*, 80 N. Y. 579. Nor will equitable relief be granted unless the complainant shows that his injury will be real and the damage irreparable. *Vickers* v. *City of Durham*, 132 N. C. 880. On the other hand, one prior decision has been based on personal fear. *Stotler* v. *Rochelle*, 109 Pac. 788 (Kan.). In view of the better established grounds on which relief might have been granted in the principal case, the court appears to have taken an unwarranted and hasty step that may involve serious difficulties for at least one type of our most humane institutions.

POLICE POWER — REGULATION OF BUSINESS AND OCCUPATIONS — NINE-HOUR LAW FOR WOMEN. — A Michigan statute provided that no female should be employed in any factory, mill, warehouse, etc., for more than fifty-four hours in any week, nor more than ten hours in any day, with the exception of persons engaged in preserving perishable goods in fruit and vegetable canning establishments. *Held*, that the statute is constitutional. *Withey* v. *Bloem*, 128 N. W. 913 (Mich.).

For a discussion of the principles involved, see 21 HARV. L. REV. 495, 544.

POLICE POWER — REGULATION OF BUSINESS AND OCCUPATIONS — REQUIREMENT OF BANK DEPOSITORS' GUARANTY FUND — COMPULSORY INCORPORATION OF BANKS. — A state statute provided that every state bank should pay an annual assessment of one per cent of its deposits for the purpose of creating a common guaranty fund for depositors. *Held*, that the statute is constitutional. *Noble State Bank* v. *Haskell*, U. S. Sup. Ct., Jan. 3, 1911.

A similar state statute also restricted the business of banking to corporations. *Held*, that the statute is constitutional. *Shallenberger* v. *First State Bank of Holstein*, U. S. Sup. Ct., Jan. 3, 1911.

The first decision affirms a case discussed in 22 HARV. L. REV. 231. See also 23 HARV. L. REV. 292, where the case reversed by the second decision is discussed. For a discussion of the principles peculiar to the second case, see also 23 HARV. L. REV. 629.

POWERS — TERMINATION OF PRECEDING ESTATE — DESTINATION OF INCOME UNTIL APPOINTMENT. — Under a marriage settlement funds were settled in trust for the husband for life or until bankruptcy, then in trust for the issue of the marriage as he should appoint, and in default of appointment, for all the children. The husband became bankrupt without having exercised his power. *Held*, that those taking under the gift over are entitled to interest accruing prior to an appointment. *In re Master's Settlement*, 55 Sol. J. 170 (Eng., Ch. D., Dec. 21, 1910).

Where there is a power of appointment with a gift over in default of exercise of the power, it is well settled that upon termination of the prior estate before the power is exercised, those taking in default of appointment take a present vested interest subject to be divested by a subsequent appointment. *Doe* v. *Martin*, 4 T. R. 39. And having such an estate they are entitled to the present enjoyment of their interest unless a provision for accumulation has been made. *Coleman* v. *Seymour*, 1 Ves. 209. Clearly no accumulation was intended here and the result arrived at is sound.

QUASI-CONTRACTS — RECOVERY FOR BENEFITS CONFERRED WITHOUT CONTRACT — OWNER'S ACQUIESCENCE PROCURED BY FRAUD. — The steamship Olympia with a cargo of coal was stranded on a reef. One Pierce, master of a pilot boat, in a uniform donned for the purpose of deceit, boarded the Olympia and told the master, a foreigner, that he was authorized to assist the vessel. The master acquiesced and Pierce ordered the men from the libellant's boats to come on board and jettison the coal. The jettison lightened the vessel and aided her in floating. *Held*, that the men who did the work are entitled to recover compensation for it. *The Olympia*, 181 Fed. 187 (Dist. Ct., S. D. Fla.).

There was no obligation imposed by law on the defendant to save the vessel which was so affected with a public interest that the law would grant recovery to one performing it for him. See KEENER, QUASI-CONTRACTS, 341. The plaintiffs' only ground for recovery is that the services rendered preserved the defendant's property; but no recovery is allowed if the service is against the owner's protest. *Earle* v. *Coburn*, 130 Mass. 596. Even if the service is rendered without the defendant's knowledge the majority of courts do not allow recovery.